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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 447

THE UNITED STATES OF AMERICA, APPELLANT

vs.

SHELDON MAURICE ANDERSON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

FILED SEPTEMBER 24, 1945

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1 In United States District Court, Western District of Washington, Southern Division

No. 15711

UNITED STATES OF AMERICA, PLAINTIFF

vs.

SHELDON MAURICE ANDERSON, DEFENDANT

Docket entries

May 12, 1945—Filed Indictment. (P. R. bond, $500.)
May 14, 1945—Arr. May 17.
May 17, 1945—Deft. in Court for arr; waives atty; stands mute. Ent. Order plea "Not Guilty" be entered. Trial set for June 13.
May 17, 1945—Filed Pers. Recognizance, $500.
May 21, 1945—Filed Praecipe U. S.—Issued Subp. (2).
May 24, 1945—Ent. order, oral Mot, deft; leave granted deft. to go to East. Dist. Wash., to be pres. in Court June 2.
May 26, 1945—Filed Demurrer to Indictment.
May 24, 1945—Filed Ret. Subp.
June 2, 1945—Deft. in court with counsel. Ent. order allow. deft. withdraw plea to argue Demurrer; Ent. rec. hear. Dem.—denied without prej. to renew at trial. Ent. plea "Not Guilty"—Trial now set for June 14 (ahead of 15708). Leave granted deft. to go to East. Dist. Wash.
June 8, 1945—Filed Memo. Opinion (Demurrer sustained).
June 12, 1945—Filed & Ent. Order sustain. Demurrer (as to juris.) & denied (as to Indict. state facts insuff. to constit. crime).
June 25, 1945—Filed Petition U. S., for Rehearing.
July 10, 1945—Ent. record hear. Pet. for Rehearing.
July 10, 1945—Filed & Ent. Order grant. Pet. for Rehearing.
July 10, 1945—Filed & Ent. Order sustain. Dem. (as to juris.); exception allowed; overruled (as to suf. of Indict.).
July 10, 1945—Ent. order deft. enlarged on present P. R. but allowed to travel.
July 17, 1945—Filed Reporter's Transcript of Court's oral decision.
July 31, 1945—Filed Petition for Appeal, U. S.
July 31, 1945—Filed Order allow. appeal to Sup. Ct. U. S.

July 31, 1945—Filed Citation (60 das.).
July 31, 1945—Filed Assignment of Errors—Notice per Rule 12.
July 31, 1945—Filed Praecipe for Transcript of Record.
July 31, 1945—Filed Statement as to Jurisdiction under Sup. Ct. Rule 12.

2 In United States District Court, Western District of Washington, Southern Division

February 1945 Term

No. 15711

UNITED STATES OF AMERICA, PLAINTIFF

vs.

SHELDON MAURICE ANDERSON, DEFENDANT

Indictment—Violation: Selective Training and Service Act of 1940, and the rules and regulations thereunder

The grand jurors of the United States of America being duly selected, impaneled, sworn, and charged to inquire within and for the Southern Division of the Western District of Washington, upon their oaths present:

3 COUNT ONE

That Sheldon Maurice Anderson, whose true and full name, other than as given, is to these grand jurors unknown, on or about the 18th day of April 1945, at Fort Lewis, in Pierce County, State of Washington, then and there being, did knowingly fail, neglect, and refuse to perform a duty required of him under the Selective Training and Service Act of 1940 and the Rules and Regulations issued thereunder in that he, the said Sheldon Maurice Anderson, did then and there refuse to submit to induction and to be inducted into the Armed Forces of the United States, as directed and ordered so to do by Spokane City Local Draft Board No. 2 of Spokane, Washington, the said Local Board then and there having authority to make such order and direction; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

(S) J. CHARLES DENNIS,
United States Attorney.
(S) HARRY SAGER,
Assistant United States Attorney.

Indictment for violation: Selective Training and Service Act of 1940, and the rules and regulations thereunder. A true bill. (S) Michael J. Keely, Foreman Grand Jury. (S) J. Charles Dennis, U. S. Attorney.

Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court, May 12, 1945. Millard P. Thomas, Clerk, by (S) Gladys Chitty, Deputy.

In United States District Court

[Title omitted.]

Demurrer.

Filed May 26, 1945

Comes now the defendant and demurs to the indictment herein on the following grounds:

I

That it does not state sufficient facts to constitute a crime.

II

That the above entitled Court has no jurisdiction of the defendant or of the subject matter of the action.

(S) John H. Binns,
Williamson, Binns & Cunningham,
Attorneys for Defendant,
Office & P. O. Address,
Suite 514 Fidelity Bldg., Tacoma 2, Washington.

Received Copy May 25, 1945.

(S) Harry Sager,
Asst. U. S. Atty.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Record of proceedings

June 2, 1945

Now on this 2nd day of June 1945, this cause comes on before the court for hearing on demurrer to Indictment. Brief of plaintiff is filed and handed to the court. Harry Sager, Asst. U. S.

Attorney represents the plaintiff. Defendant in court represented by Counsel John Binns. Defendant comes forward and permission of the court having been obtained, the defendant withdraws his former plea of not guilty in order to permit argument on demurrer. Argument by Mr. Binns on demurrer. Argument by Mr. Sager. The court now overrules the demurrer of defendant, without prejudice of renewing demurrer at the time of trial. Defendant comes forward for plea. Defendant and counsel waive reading of indictment. Defendant now enters a plea of not guilty, which plea is ordered entered. Cause is set for trial on June 14, the former setting of June 13 being ordered vacated by the court. Cause No. 15711 to take precedence over Cause No. 15708. Defendant is again permitted to go to the Eastern District of Washington until the trial date.

7 In United States District Court

[Title omitted.]
[File endorsement omitted.]

J. CHARLES DENNIS, *U. S. Attorney.*
HARRY SAGER, *Asst. U. S. Attorney,*
Tacoma, Washington,
Attorneys for Plaintiff.
JOHN H. BINNS, *514 Fidelity Bldg., Tacoma, Wash.*
Attorney for Defendant (Apptd. by Court).

Memorandum opinion

Filed June 8, 1945

LEAVY, District Judge:

This defendant, Sheldon Maurice Anderson, was indicted by a Grand Jury in this District and Division, the charging part of the indictment being as follows:

"That Sheldon Maurice Anderson, * * * on or about the 18th day of April 1945, at Fort Lewis, in Pierce County, State of Washington, then and there being, did knowingly fail, neglect, and refuse to perform a duty required of him under the Selective Training and Service Act of 1940 and the Rules and Regulations issued thereunder, in that he * * * did then and there refuse to submit to induction and to be inducted into the Armed Forces of the United States as directed and ordered so to do by Spokane City Local Draft Board No. 2 of Spokane, Washington, the said Local Board then and there having authority to make such order and direction;"

After the defendant was brought into court for arraignment, he being an impecunious person and unable to secure counsel, the

Court appointed John H. Binns, Esq., a member of the Tacoma bar, to represent the defendant. Mr. Binns thereafter filed a Demurrer to the indictment, challenging it upon two grounds, to wit:

1. That it does not state facts sufficient to constitute a crime.

8 2. That the above-entitled court has no jurisdiction of the defendant or the subject matter of the action.

This matter is now before the court for disposition on the Defendant's Demurrer, and the first ground thereof is overruled, but the challenge as to the jurisdiction of this court of the offense charged must be sustained.

Specifically, the charge contained in the indictment is that the defendant refused to submit to induction into the Armed Forces of the United States, as directed and ordered so to do by the Spokane City Local Draft Board No. 2, of Spokane, Washington.

During the course of the argument on the Demurrer, it was developed that the defendant actually responded to the order of induction by the Spokane Local Draft Board, and accompanied a group of draftees from Spokane, Washington, to Fort Lewis, Washington. The court takes judicial notice of the fact that Spokane is not within its jurisdiction, but is located within the jurisdiction of the United States District Court for the Eastern District of Washington. Fort Lewis is located within the jurisdiction of this court. While at the Fort and undergoing the final steps of his induction, the defendant declined to take the Oath, unless he were given the assurance that Army regulations concerning vaccination would be waived as to him. Such assurances were denied, and he was permitted to return to Spokane, Washington. Subsequently he was indicted in this Judicial District.

It is the contention of the Government that the defendant's failure to submit to induction into the Armed Forces after his arrival within this Judicial District fixed the venue and jurisdiction of the offense herein.

9 Taking the language of the indictment at its face, the precise question presented is: Of what offense is the defendant accused? The Government admits that the defendant is charged with refusing to submit to induction, as ordered and directed to do by his Draft Board, and then further contends that "induction" is made up of a number of separate steps, and that the final steps necessary to complete it in this case happened to be in this Judicial District by reason of the fact that Fort Lewis is located herein, and that, therefore, this Court has jurisdiction of the offense charged. A careful reading of the Selective Training and Service Act of 1940, and the Amendments thereto, Title 50

U. S. C. A. Sec. 301, et seq., together with the regulations promulgated under the provisions of the Act, does not sustain this contention. On the contrary, it clearly fixes the jurisdiction of the courts in reference to violations such as here involved, as being in the place where the local draft board is located.

Passing upon this Demurrer naturally calls for a construction of the constitutional rights of the defendant under the 6th Amendment providing for trial "by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law," and to give application to this constitutional provision calls for a construction of the Selective Training and Service Act and the Regulations in reference to jurisdiction.

The Demurrer to the Indictment presents an issue of far-reaching importance, because it is elementary in criminal law that if the court is without jurisdiction of the subject matter its proceeding is a nullity. Even the consent of the accused can not confer jurisdiction, and it is an issue that can be made at any stage of the proceedings, or raised after conviction and execution of judgment by way of Writ of Habeas Corpus. It is not only a matter of great importance to the individual here involved, but might readily involve a great number of prosecutions that arise by reason of the criminal provisions of the Selective Training and Service Act and Regulations, which call for an interpretation of them in reference to the jurisdictional question here presented. It is for this reason that I have endeavored to examine carefully the provisions of the Act, itself, and the Regulations to ascertain the intent of Congress in its enactment, and, likewise, the intent of the executive department that promulgated the Regulations, in reference to fixing jurisdiction.

Congress, in enacting this legislation and providing for the penalties, in Section 311, with great particularity provided, "The District Court of the United States having jurisdiction thereof," would be the tribunal to try offenses, and that "no person shall be tried by any military or naval court martial in any case arising under the Act, unless such person has been actually inducted for the training and service prescribed under this Act."

When we turn to the Regulations, we find Section 601.5, which says:

"A delinquent is a man liable for training and service under the provisions of the Selective Training and Service Act of 1940, as amended, who fails or neglects to perform any duty required of him under the provisions of the Selective Training and Service Act of 1940, as amended, and the Regulations made pursuant thereto."

Section 601.8 provides:

"The term 'induction station' refers to any camp, post, ship or station at which selected men are received by the military authorities, and, if found acceptable, are inducted into the military service."

11 Section 613.14 reads:

"The local board for the area in which the residence of the registrant is located, *will always have jurisdiction of the registrant.*" [Italics added.]

Then the Regulations in Sec. 613.21 make the further provision concerning recalcitrants:

"If he is still refractory, his name and the names of the witnesses should be noted and the case immediately reported to the Chairmen of the local board, who may report the case to the United States District Attorney."

To me this clearly implies that such report can be made only to the United States Attorney for the district in which the local board is located.

In Regulation 614.47, provision is made for jurisdiction where a person registers more than once and it is therein provided that unless the registrant has selected one of the local boards for jurisdiction, the registrant shall be subject to the jurisdiction of each local board having a registration card of such registrant.

Section 629.22 of the Regulations dealing with the forwarding of registrants for preinduction physical examination provides in Subsection (e) that:

"The local board shall instruct all registrants in the group that it is their duty to obey the instructions of the leader or assistant leaders during the time they are going to and returning from the induction station; that they will be met by proper representatives of the armed forces when they arrive at the induction station; that while they are at the induction station, they will be subject to and must obey the orders of the representatives of the armed forces; that they must present themselves for and submit to such examination as the commanding officer of the induction station shall direct; that they will be returned to the local board when the examination is completed."

Sec. 633.22, which concerns forwarding registrants for induction, and is directly in point in the instant situation, provides in Subdivision (4) as follows:

12 "The local board shall instruct all registrants in the group that it is their duty to obey the instructions of the leader or assistant leaders during the time they are going to the place of induction; that they will be met by proper representatives of the armed forces at the place of induction; that while they are at the

place of induction they will be subject to and must obey the orders of the representatives of the armed forces; that *they must present themselves for and submit to induction* that if they are rejected, the representatives of the armed forces will, to the extent prescribed by the regulations of the armed forces, provide transportation and subsistence for their return trip." (Italics added.)

Then Sec. 642.44 outlines the duties of the local board in reference to the failure of any of its registrants to submit to its orders, and those duties are:

"Every registrant who has heretofore or who hereafter fails to comply with an order for induction * * * shall be reported promptly to the United States Attorney on a 'Delinquent Registrant Report; provided, that, if the local board believes that by reasonable effort it may be able to locate the registrant and secure his compliance, it may delay the mailing of such 'Delinquent Registrant Report."

Section 642.42 fixes the duties of the United States District Attorney when such Report is made, and Section 642.44 requires that the local board keep a record of delinquents.

From the foregoing quotations of the Regulations, it is clear that this defendant is still within the jurisdiction of his local board in Spokane, Washington, and subject to its further orders and directions, and it follows logically that the "United States District Attorney" referred to in the Regulations can be none other than the United States District Attorney of the judicial district wherein the local board is located.

There have been numerous decisions interpreting and construing the Selective Training and Service Act and Regulations. I shall refer to only a few of them as they seem to bear, either directly or inferentially, on this question of jurisdiction.

In Falbo vs. United States, 320 U.S. 459 (553), the Court uses the following language:

"In each case the registrant is under the same obligation to obey the order. But in neither case is the order to report the equivalent of acceptance for service. Completion of the functions of the local boards and appellate agencies, important as are these functions, is not the end of the selective service process. The selectee may still be rejected at the induction center, and the conscientious objector who is opposed to noncombatant duty may be rejected at the civilian public service camp. The connected series of steps into the national service which begins with registration with the local board does not end until the registrant is accepted by the army, navy, or civilian public service camp. Thus, a board order to report is no more than a necessary intermediate step in a united and continuous process designed to raise an army speedily and efficiently."

This decision has been followed by the more recent case of Billings vs. Truesdell, 321 U. S. 542, wherein it quoted the Falbo case to the effect that induction is one continuous process for the selection of men for national service, and then the court said (page 547):

"The examination of men at induction centers and their acceptance or rejection are parts of that process. Induction marks its end. But prior to that time a selectee is still subject to the Act and not yet a soldier. A case involving his rights or duties as a selectee prior to that event is a case arising under the Act. The civil authorities, not the military, are charged with the duties of enforcement at that stage of the process. That necessarily means that the measure of a selectee's rights and duties is to be found in the Act. * * *."

In United States vs. Collura, 139 Fed. 2nd 317, Second Circuit, we have a case where the inductee assumed an attitude identical with that of the defendant in this case in that he refused to be inducted unless the regulation concerning vaccination would be waived as to him, and while the issue of jurisdiction was not presented, the Court, in passing upon the reasons given by the
14 defendant for not submitting to induction, had this to say:

"The district judge refused to consider the validity of the Army Regulations regarding vaccination and rightly restricted the issue to whether or not the appellant reported at the induction center *prepared to be inducted into the army without qualification.* * * * The selectee must not only appear but must be ready to go through the process which constitutes induction into the army." [Italics added.]

The Government cites among authorities that it relies upon the case of United States vs. Van Den Berg, 139 Fed. 2nd 654, 7th Circuit. This case is not directly in point, but it would seem to sustain the position of the defendant rather than that of the Government, because the accused insisted that jurisdiction was in the district of his residence, rather than in the district where he had registered, and the court held that he could not divest the court of jurisdiction in the district where his omission to act constituted a crime.

When we apply the language of the Act and Regulations, and the judicial interpretations, it is clearly established: First, that this defendant is still a civilian; Second, he continues to be a registrant of the Spokane City Local Draft Board No. 2 of Spokane, Washington; Third, that Board alone has the power to order his induction or further consider his classification; and, Fourth, the offense with which he is charged is a failure to obey the order of induction of that Board. Therefore, the offense was committed, if at all, within the Eastern District of Washington.

The United States District Court for the Eastern District of Washington alone has jurisdiction, and it is there that the defendant must be proceeded against.

An order sustaining the demurrer may be submitted, and an exception will be allowed to the plaintiff.

Dated this 8th day of June 1945.

(S) CHARLES H. LEAVY.

15 In United States District Court

[Title omitted.]

Record of proceedings

June 12, 1945

Now on this 12th day of June 1945, in the above matter, E. B. Cunningham appears on behalf of Counsel John Binns, counsel for defendant. Order sustaining demurrer signed by the court and filed.

16 In United States District Court

[Title omitted.]

Order sustaining demurrer

Filed June 12, 1945

The Court having heard the arguments of counsel and being fully advised in the premises, it is hereby

Ordered that the demurrer of defendant is hereby sustained upon the ground that this Court has no jurisdiction of the defendant or of the subject matter of this action. Plaintiff excepts and an exception is allowed to plaintiff. It is further

Ordered that defendant's demurrer is overruled as to the first ground alleged, to wit:

That the indictment does not state facts sufficient to constitute a crime.

Done in open court this 12th day of June 1945.

CHARLES H. LEAVY,
United States District Judge.

Presented by:

(S) John H. Binns.
JOHN H. BINNS.
Attorney for Defendant.

Approved as to form:

HARRY SAGER,
(S) Harry Sager,
Asst. U. S. Attorney.

[File endorsement omitted.]

17 In United States District Court

[Title omitted.]

Petition for rehearing

Filed June 25, 1945

Now comes the United States of America by its counsel and respectfully moves the Court to grant this petition for a rehearing in the above-entitled case, to set aside its order entered June 12, 1945, sustaining the demurrer to the indictment, and to overrule said demurrer.

The grounds of the order of June 12 are that the United States District Court for the Western District of Washington does not have jurisdiction of the offense charged in the indictment because the Selective Service Board which issued the order upon which the prosecution is predicated is located within the Eastern District of Washington, and that the offense of violating said order was committed wholly within the district where such Board is located despite the fact that the Fort Lewis induction station where the defendant refused to be inducted is located within this judicial district.

Defendant's offense, as charged in the indictment, is his failure, neglect and refusal to perform a duty required of him under the Selective Training and Service Act of 1940 and the regulations promulgated thereunder, by refusing to submit to induction and to be inducted into the armed forces of the United States, as directed and ordered by Local Board No. 2 of Spokane, Washington. The failure, neglect, and refusal to perform this

18 duty occurred, and is charged to have occurred, at Fort Lewis. It is thus obvious that the offense consists of a failure to perform a required act and, as we have already pointed out in our brief in this case, the law in such instances is that the venue lies in the jurisdiction where the act should have been performed. We deem it unnecessary again to refer to the cases on this question, and we shall confine our argument showing that the defendant failed to perform a required act of Fort Lewis in the Western District of Washington and within the jurisdiction of this Court.

As the opinion of this Court recognizes, defendant is a registrant of a Spokane draft board, was ordered by it to report for induction, and reported to it in Spokane. However, he was thereupon transported to the induction station at Fort Lewis and that is where he refused to be inducted. This procedure is squarely in accordance with the Selective Service regulations.

An induction station is "any camp, post, ship, or station at which selected men are received by the military authorities and, if found acceptable, are inducted into military service" (Sec. 601.8). Respecting induction, the regulations are extremely specific and detailed. They make it the duty of the registrant to report for induction at the time and place fixed in the board's order (Sec. 633.21 (a)); to follow the instructions of the board as to the manner in which he shall be transported to the location where his induction will be accomplished; to obey the instructions of the leader for the group being forwarded for induction; and to obey the orders of the military authorities while he is at the place where his induction will be accomplished and to submit to induction (Sec. 633.21 (b)). They further provide that
19 when the registrants who are to be forwarded for induction are assembled the board shall perform certain functions, including the instruction of registrants that they must obey the leader while they are going to the place of induction; that while they are at the place of induction they must obey the orders of the representatives of the military; and that they must present themselves for and submit to induction (Sec. 633.22). Other sections provide that when registrants are forwarded to the induction station and found acceptable for service in the armed forces they will be immediately inducted (633.23); and that "at the induction station the selected men who have been forwarded for induction and found acceptable will be inducted into the armed forces" (Sec. 633.25).

It is thus apparent that registrants are ordered to assemble at their local board for convenience in transporting them to the induction station, but they are invariably transported to the latter place which is the only place where they are or could be inducted. Sections 601.8, 633.23 and 633.25 just referred to make it abundantly clear that this defendant could have been inducted at no place other than Fort Lewis, the induction station to which Spokane registrants are forwarded by the Spokane draft boards. He could not and would not have been inducted at Local Board No. 2 in Spokane, or anywhere else in the Eastern District of Washington. Pursuant to the procedure set up by the regulations he was transported to Fort Lewis in the Western District that is the place where he would have been inducted except for his refusal to perform the statutory duty imposed upon him, and that is the place where he refused to perform such duty.

It seems impossible to conclude that defendant's offense
20 was not committed at the induction station. Actually, it is difficult to say that he violated the Selective Service Act and regulations at Spokane, Washington. He did in fact report there, and when he left that city for Fort Lewis he was not yet in

violation of the Act, for up until that time he had not refused to perform any duty. If he had been rejected at Fort Lewis he would never have been in a position where it was necessary for him to refuse to perform such a duty and hence he would never have violated the Act. However, at the induction station he refused to be inducted. Then he clearly became in violation of the Act and regulations. Since Fort Lewis is the place where he was required to perform this duty, and is the only place where the same could have been performed, the indictment plainly charges an omission to do a require act within the jurisdiction of this Court.

In view of the fact that the defendant was in compliance with the Act and regulations up until the time he reached Fort Lewis, it may perhaps be doubted whether he committed any offense in Spokane and hence it may well be that he could not be prosecuted in the Eastern District of Washington. But in any event, he did refuse to be inducted and it is clear that jurisdiction must lie somewhere. Obviously it must lie in the district where the induction station is located, since that is where the refusal took place. It may or may not lie also in the district where defendant's local board is situated, but we need not be concerned with that question. The most that an affirmative answer to that question would mean is that defendant's offense was a continuing one, beginning in the Eastern District at Spokane and culminating in the Western District at Fort Lewis. That, however, could not affect in the slightest the jurisdiction of this Court. Under
21 28 U. S. C. Sec. 103 defendant's crime would be one commenced in one judicial district and completed in another, which "shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein." This Court, of course, is aware of the long line of decisions in the Supreme Court holding that under this statute a continuing crime may run through several jurisdictions and is cognizable in each. Hyde v. United States, 225 U. S. 347; Haas v. Henkel, 216 U. S. 462; United States v. Freeman, 239 U. S. 117; Palliser v. United States, 136 U. S. 257.

The opinion of this court cites a number of provisions of the Selective Service regulations, to some of which we have alluded supra. Considerable reliance seems to be placed upon Sec. 613.14, providing that the local board for the area in which the registrant is located will always have jurisdiction of the registrant. Under this section registrants who move to other parts of the country nevertheless remain within the jurisdiction of the board with which they have registered, and do not by the mere fact of their moving pass beyond its power and into that of the board for

the area to which they go. Detailed procedure is set up by which registrants who move to other parts of the country may transfer for induction. Sec. 633.11 provides that a registrant who is so far from his own local board that reporting to it for induction would be a hardship, may transfer at his own request so that he may be delivered for induction where he is then residing, rather than where he registered, but the regulation makes it clear that the transferring registrant is not removed from the jurisdiction of his own local board, i. e., the one with which he is registered. He must be credited to its quota, he cannot be claimed in the quota of the board of transfer, and he must be delivered to the induction station as an extra man. This jurisdiction of the local board over the registrant under the regulations, however, is entirely different from the jurisdiction of the federal courts over an offense committed by a registrant. The board's jurisdiction is for purposes of administrative procedure under the Selective Service Act, not for purposes of criminal prosecution. The fact that the regulations provide that a man's own local board retains jurisdiction over him has no bearing whatsoever on the question of what court has criminal jurisdiction if the registrant commits a crime. That depends, of course, on the place where the crime occurs. That is the law of criminal jurisdiction which the regulations could not change even if they sought to do so. Hence we do not believe that Sec. 613.14 is authority for holding that only the District Court for the Eastern District of Washington has jurisdiction over defendant's offense.

It is well settled that there is no constitutional or statutory provision entitling one to a trial in the district where he resides; he is entitled under the Sixth Amendment and the federal statutes only to a trial by an impartial jury of the state and district wherein the crime was committed. Haas v. Henkel, 216 U. S. 462; Andrade v. United States, 46 F. (2d) 776 (C. C. A. 5); United States v. Jordan, 22 F. (2d) 702 (M. D. Pa.); United States v. Mayer, 22 F. (2d) 827 (M. D. Pa.). There is nothing in the decisions from which an inference could be drawn that a registrant must be tried for a crime at the place where the local board with which he is registered is situated. Obviously, the general rule applies and a registrant must be tried at the place where the crime is committed.

There is no case holding that a registrant must be tried in the federal judicial district where his local board is located. On many occasions registrants have been tried in other districts. In cases of this type it is the government's policy to bring the prosecution in the judicial district where the induction station is located, not that in which the registrant's local board is situated. The policy was worked out and agreed upon by the

Department of Justice and the National Headquarters for Selective Service in Washington, D. C.

The Department and Selective Service Headquarters have worked together closely, both in the administration of the Selective Service Act and in the promulgation of the regulations thereunder. Serious consideration was given to the question of venue in cases such as this, where the induction station to which a local board forwards its selectees for physical examination and induction is in a judicial district other than that in which the board is situated. Much effort was devoted to ascertaining which of those districts was the proper one in which to institute the prosecution, not because it made any particular difference to the government which district should be selected—of course it is as convenient to indict in one as in the other—but because it was deemed important, to prevent appeals, etc., to be sure where jurisdiction lies or, if it lies in both districts, to select the one where the existence of jurisdiction seemed plainest. The Department and Selective Service Headquarters reached the conclusion that this type of case should be brought in the district where the induction station is located. Accordingly, at the Conference of United States Attorneys in 1942, the Department instructed them as follows:

24 "Failure to report for induction.—Venue is in the district where the subject was ordered to report.

"In certain instances, registrants report to their local boards and are then ordered to report to induction stations or work camps in other districts. If the subject reports to his local board, but later fails to report to the induction station or work camp, venue is not where the board is but where the station or camp is."

Thereafter, on April 4, 1944, the Department issued its Circular No. 3421, Supplement No. 21, directed to all United States Attorneys, instructing them that:

"The venue in a prosecution for refusal to submit to induction at the reception center (as distinguished from failure to report for induction) would be in the district in which the reception center is situated."

Virtually simultaneously, on April 3, 1944, the War Department revised the Army Regulations relating to procedure when inducting selectees. The amendment reads, in part:

"Notification of refusal to submit to induction will be prepared in triplicate. The original, together with the voluntary statement described in (a) above, if such is obtained, will be submitted to the United States Attorney *for the District in which the man refused to be inducted*. One copy will be sent to the State Director, Selective Service System, of the State in which the man re-

fused to be inducted, and the other copy will be sent to the Selective Service Local Board which delivered the man for induction." [Italic ours.]

The amended regulation is attached to Supplement 22 of the circular above referred to. Copies of both supplements are attached hereto.

Consequently it is plain that in this case the government followed the procedure prescribed and contemplated by the Army, the Selective Service System, and the Department of Justice when it indicted the defendant in the Western District of Washington, rather than in the Eastern District of that state.

25 In the face of the background of this question, the Department circular and the Army Regulation, it cannot be said that Selective Service procedure contemplates prosecution only in the district where the local board is situated.

The theory of the instant case is closely analogous to that of the numerous prosecutions for refusal to work in and desertion from Civilian Public Service Camps. Pursuant to Secs. 652.1 and 652.2 of the regulations, a conscientious objector is ordered by his local board on DSS Form 50 to report to a designated camp for work of national importance under civilian direction. It is made the duty of the registrant to comply with the order, to report at the camp at the designated time and place, to remain there and thereafter to perform work as directed. These duties are required by the order of the registrant's board, and when he reports there but thereafter deserts, or refuses to work while he is there, it is his board's order which he is violating; just as in this case the defendant violated his local board's order when he refused to submit to induction. However, the recalcitrant conscientious objector is, of course, prosecuted where the work camp is located. Since there are relatively few such camps, most of their inmates are registered with boards in judicial districts other than the one where the camp is; but the registrants are not tried in the district of the local board. It could hardly be argued that a Washington registrant who was assigned to a Civilian Public Service Camp in Oregon, and who deserted therefrom, could not be prosecuted in Oregon. The analogy is particularly close because many deserters go to the camp with no intention of remaining there; they merely report in order to say they have fulfilled all steps required by administrative procedure, and leave camp immediately.

26 Similarly, the defendant in this case had no intentions of being inducted when he reported at Fort Lewis; he merely reported there for the same purpose knowing that he would refuse to be inducted.

The question here involved has been considered by the courts on very few occasions, since it is rarely raised despite the many in-

stances where two different districts are involved. The Circuit Court of Appeals for the Fourth Circuit, however, passed upon a virtually identical question in Bratcher v. United States, decided on May 9, 1945, and not yet reported, certiorari denied on June 18, 1945. There the defendant was charged in the Eastern District of Virginia with presenting himself to the induction station at Fort Myer, Virginia, and to the medical officers thereof, for induction, pursuant to an order of Local Board No. 1 of Washington, D. C., while in an abnormal physical condition resulting from the use of a drug which he had taken for the purpose of causing his rejection. Bratcher was registered with the Washington, D. C., board and the induction station at which all selectees from the District of Columbia were examined and inducted was Fort Myer in the State of Virginia. Bratcher contended both in the Circuit Court of Appeals and in his petition for a writ of certiorari that no jurisdiction resided in the Eastern District of Virginia and that he could be tried only in the District of Columbia since that is the place where he lived, where he registered, where he took benzedrine, and where he reported to the local board pursuant to its order. He urged that the fact that he was transported from the board to Fort Myer, Virginia (just as the defendant in this case was transported from Spokane to Fort Lewis), did not give
the District Court of the Eastern District of Virginia
27 jurisdiction over his offense. The Circuit Court of Appeals disposed of this contention by saying:

"The evidence shows conclusively that the induction station at Fort Myer is in the State of Virginia and the District Court for the Eastern District of Virginia clearly had jurisdiction of the case because it was there that the offense, charged in the second count of the indictment, was committed."

A copy of the Bratcher opinion is attached hereto.

In Charles Mattox v. Fred Caudil, Marshal, No. 194, District Court for the Western District of Missouri, decided January 2, 1945, defendant, a registrant of a Missouri draft board, was assigned to a work camp in Michigan. He reported there but later became absent without leave, going home to Missouri and refusing to return to camp. Indicted in Michigan, he was arrested in Missouri and resisted removal to the district where the prosecution was pending. The court ordered his removal to Michigan on the ground that it was his duty to return to camp, that his failure to do so was an offense, and that he should stand trial in Michigan.

In Gibson v. United States, decided June 15, 1945, by the Circuit Court of Appeals for the Eighth Circuit and not yet reported, appellant was a registrant with an Arkansas draft board

who was convicted of deserting from a work camp in South Dakota. On appeal he argued as follows in his brief, urging that venue should have been laid in Arkansas where he registered:

"The controversy between the defendant and his local board originated and was terminated within the administrative agency in the state of Arkansas. The draft board files showing jurisdiction over the defendant were located in Arkansas. These records, pursuant to stipulation of the parties, were produced from Arkansas without bringing the clerk of the local board to prove their content. All of the members of the boards that considered defendant's rights under the Act reside in Arkansas. Also
28 the State Director of Arkansas. All these witnesses were hundred' of miles from Hill City, South Dakota.

"South Dakota was not the district where the controversy arose or where the order on which the indictment is based was issued. Therefore the alleged crime was not committed in South Dakota, because the order, the source of which was in Arkansas, that the defendant is alleged to have violated, commanded the defendant not only to report. The Arkansas order also required the defendant "to remain in the camp and perform" his duties. (Government's Exhibit 3.) See also Billings v. Truesdell, 321 U. S. 542, 557–558."

The Government's reply was that his crime was committed in South Dakota where he failed to work at the camp to which he had reported, citing United States v. Van Den Berg, 139 F. (2d) 654 (C. C. A. 7). By affirming the conviction the Circuit Court of Appeals plainly resolved this contention against appellant, evidently not deeming it of sufficient importance to justify discussion in its opinion. A copy thereof is attached hereto for the Court's convenience.

No case has held that a registrant must be prosecuted in the district where his local board is situated. The Department of Justice files disclose many cases where venue was laid as was done here and, though the jurisdictional question was not raised, convictions were secured. We will cite a few examples.

United States v. Albert Oswald Mueller, No. E4478 Criminal, Western District of Pennsylvania. Defendant, a registrant with a New Jersey draft board, was convicted in Pennsylvania for deserting from a work camp in the latter state. This case was affirmed per curiam by the Circuit Court of Appeals for the Third Circuit on June 1, 1945 (not yet reported).

United States v. James Edward Hall, convicted October 23, 1944, in the District of Colorado. Defendant was a registrant with a Florida draft board who reported to a work camp

29 in Colorado at 11:45 a. m. and left at noon the same day.

United States v. Christian Govertsen, Jr., convicted November 17, 1944, in the District Court for the Southern District of New York. Defendant was registered with a draft board in the Eastern District of New York and refused to submit to induction at the induction station in the Southern District to which his board forwarded him.

United States v. Everett Patterson Murdock, No. 3373, May Term, 1945, Northern District of Georgia. Defendant was registered with a draft board in Tennessee, reported to it pursuant to order and was forwarded to Fort Oglethorpe, Georgia, where he refused to submit to induction.

United States v. Winfield Andrew Counts, No. 4363, March Term, 1945, Western District of Virginia. Defendant was registered with a Florida draft board and was convicted of failing to remain in a work camp in Virginia.

United States v. Royal Wayne Rea, No. 14561 Criminal, January Term, 1944, Western District of Oklahoma. Defendant was registered with a draft board in the Northern District of Oklahoma and was convicted of deserting from a work camp in the Western District of that state.

Another example which we believe analogous is that of registrant who transfer for induction from their own local board to the board having jurisdiction over the area to which they move. Such registrants are ordered by the board of transfer to report for induction and if they violate that order they are tried there, not in the judicial district of their own local board. There are many such cases and no court has doubted that jurisdiction lies in the district of the board of transfer. Yet to construe Sec. 614.14 of the regulations as this Court has done would mean that the latter district has no jurisdiction since the registrant's own local board "will always have jurisdiction of" him.

As illustrations of transfer cases we might point to Shigeru Fiji v. United States, 148 F. (2d) 398 (C. C. A. 10), certiorari denied May 28, 1945, where the defendant registered with a California board, was compelled to move to a Japanese Relocation Camp in Wyoming, transferred to a Wyoming draft board, and was convicted in Wyoming when he violated its order to report for induction. Further, in United States v. Alfredo Pelli, No. 894, District of Rhode Island, the defendant registered with a Rhode Island board and subsequently moved to Brooklyn, New York. He transferred to a Brooklyn board and refused to report for induction when it ordered him to do so. He was indicted in Rhode Island, but the District Court for that state held that his

crime was committed in the Eastern District of New York and that jurisdiction lay only in the court for that district.

Of course, the regulations to which this Court refers in its opinion provide that a registrant who becomes delinquent shall be reported by his local board to the United States Attorney, and doubtless this means a report to the United States Attorney for the district in which the board is located. This, however, does not prevent trial of a delinquent in another district if he commits a crime there. The delinquency report is merely a matter required by the regulations for purposes of administering them. Obviously a delinquent could be prosecuted even if the board failed completely to report him, and similarly he may be prosecuted by one United States Attorney even though he has been reported to another. The report has nothing to do with jurisdiction—that depends upon where the crime was committed.

31 In view of the foregoing we respectfully submit that this petition for a rehearing be granted and that the Court revoke its order of June 12 sustaining the demurrer in this case and enter another order overruling the same.

(S) J. Charles Dennis,
J. Charles Dennis,
United States Attorney.
(S) Harry Sager,
Asst. U. S. Atty.

Rec'd copy without exhibits June 25, 1945.

(S) John H. Binns,
Atty for Deft.

[File endorsement omitted.]

32 In United States District Court

[Title omitted.]

Record of proceedings

July 10, 1945

Now on this 10th day of July 1945, this cause comes on for hearing on petition of United States for rehearing, demurrer to indictment having been heretofore sustained. Harry Sager, Asst. U. S. Attorney represents the government. John H. Binns, having been appointed by the court, represents the defendant. The court permits the plaintiff to present order vacating effect of order sustaining defendant's demurrer. Order granting petition for re-

hearing signed by the court and filed. The court now remarks further re demurrer and now sustains the defendant's demurrer to the Indictment. Order sustaining demurrer signed by the court and filed. The court orders the defendant continue to be retained on present personal recognizance, but he shall be at liberty to travel as he chooses.

33 In United States District Court:

[Title omitted.]

Order granting petition for rehearing

Filed July 10, 1945

The above-entitled cause coming on before the court this day, the parties appearing by their respective counsel, and it appearing that an order was entered herein on June 12, 1945, sustaining defendant's demurrer to the indictment; that thereafter and on June 25, 1945, the plaintiff filed herein its petition for rehearing; and the court having fully considered the matter, it is

Ordered that the plaintiff's petition for rehearing upon the defendant's demurrer be, and the same hereby is granted, and the Order Sustaining Demurrer heretofore entered in this cause on June 12, 1945, be and it hereby is vacated and set aside.

Done in open court this 10th day of July 1945.

CHARLES H. LEAVY,
United States District Judge.

Presented by:

(S) Harry Sager,
HARRY SAGER,
Assistant United States Attorney.

Approved as to Form:

(S) JOHN H. BINNS,
Attorney for Defendant.

[File endorsement omitted.]

34 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Order sustaining demurrer

Filed July 10, 1945

The above entitled cause coming on this day for hearing upon the plaintiff's petition for rehearing, and the said petition for

rehearing having heretofore been granted, and the parties appearing by their respective counsel, and the Court having considered the said petition for rehearing, and the arguments of counsel, and being fully advised in the premises, it is therefore,

Ordered that the prayer of the said petition for rehearing, praying for an order overruling the defendant's demurrer to the indictment be, and the same is hereby denied. It is further

Ordered that the defendant's demurrer to the indictment herein be, and it hereby is sustained upon the second ground of said demurrer, namely, that this court has no jurisdiction of the defendant, nor of the subject matter of this action. Plaintiff excepts and exception is allowed. It is further

Ordered that the defendant's demurrer to the indictment herein is overruled as to the first ground, namely, that the indictment does not state facts sufficient to constitute a crime.

Done in open court this 10th day of July 1945.

[S] CHARLES H. LEAVY,
United States District Judge.

Presented by:

[S] JOHN H. BINNS,
Attorney for Defendant.

Approved as to Form:

[S] HARRY SAGER,
Assistant United States Attorney.

33 In United States District Court

[Title omitted.]

Record of proceedings

July 31, 1945

Now on this 31st day of July 1945, this cause comes on before the court for hearing. J. Charles Dennis, U. S. Attorney, files petition for appeal. Notice of Service is signed by the court and filed. Assignment of Errors filed. Order allowing appeal to Supreme Court signed by the Court and filed. Praecipe for transcript filed.

36 In United States District Court

[Title omitted.]

Petition for appeal

Filed July 31, 1945

Comes now the United States of America, plaintiff herein, and states that on the tenth day of July 1945, the District Court

of the United States for the Western District of Washington entered a judgment and order sustaining a demurrer to the indictment herein, and that the United States of America, feeling aggrieved at the ruling of the District Court sustaining the said demurrer, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Petitioner submits and presents to the court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

UNITED STATES OF AMERICA,
(S) J. CHARLES DENNIS,
United States Attorney,
Western District of Washington.

[File endorsement omitted.]

37 In United States District Court

[Title omitted.]

Filed July 31, 1943

Comes now the United States of America by J. Charles Dennis, United States Attorney for the Western District of Washington, and avers that in the record proceedings and judgment and order herein there is manifest error and against the just rights of the said plaintiff, the United States of America, in this, to wit:

1. That the court erred in sustaining the demurrer to the indictment.

2. That the court erred in holding that a violation of Section 11 of the Selective Training and Service Act of 1940 (54 Stat. 898 903, 50 U. S. C. Appendix 311) by the refusal of a registrant to submit to induction as directed by the order of his local board may only be prosecuted in the federal district in which the local board is located and may not be prosecuted in the federal district in which the induction station, at which the refusal to submit to induction occurred, is located.

(S) J. CHARLES DENNIS,
United States Attorney,
Western District of Washington.

[File endorsement omitted.]

38 In United States District Court

[Title omitted.]

Order allowing appeal to the Supreme Court of the United States

Filed July 31, 1945.

This cause came on this day before the Court on petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for reversal of the judgment and order in the cause sustaining the defendant's demurrer to the indictment therein, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said petition, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of the Court, it is, therefore, by the Court ordered and adjudged, that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court sustaining the defendant's demurrer to the indictment, to the Supreme Court of the United States, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court.

It is further ordered, that the United States of America
39 be, and it is hereby, permitted a period of sixty days in which to file and docket the said appeal in the Supreme Court of the United States.

Dated at Tacoma, Washington, this 31st day of July, 1945.

By the Court:

(S) CHARLES H. LEAVY,
United States District Judge,
Western District of Washington.

Presented by:

J. Charles Dennis,

J. Charles Dennis,
United States Attorney.

[File endorsement omitted.]

40 [Citation in usual form omitted in printing.]

41 In United States District Court

[Title omitted.]

Praecipe for Transcript of Record

Filed July 31, 1945

To the Clerk of the District Court of the United States for the Western District of Washington:

The appellant, the United States of America, hereby directs that in preparing the transcript of the record in this cause in the District Court of the United States for the Western District of Washington, you include the following:

1. Docket entries and minute entries showing filing of the indictment, filing of the demurrer thereto, entry of order sustaining the demurrer, filing of the petition for rehearing, entry of the order granting petition for rehearing, entry of order sustaining the demurrer on rehearing, and filing of memorandum opinion of Judge Leavy, dated June 8, 1945.
2. Indictment.
3. Demurrer to the indictment.
4. Order sustaining demurrer.
5. Memorandum opinion of Judge Leavy, dated June 1945.
6. Petition for rehearing.
7. Order granting petition for rehearing.
8. Order sustaining demurrer on rehearing.

42 9. Petition for appeal to the Supreme Court.

10. Statement as to the jurisdiction of the Supreme Court.
11. Assignment of errors.
12. Order allowing appeal.
13. Notice of service on appellee of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.
14. Citation.
15. Praecipe.

(S) J. Charles Dennis,
United States Attorney,
Western District of Washington.

Service of the foregoing Praecipe for Transcript of Record is acknowledged this 31st day of July 1945.

———— ————, *Counsel for Appellee.*

[File endorsement omitted.]

43 [Clerk's certificates to foregoing transcript omitted in printing.]

46 In the Supreme Court of the United States

Statement of points to be relied upon and designation of record

Filed Oct. 16, 1945

Pursuant to Rule XIII, paragraph 9 of this Court, appellant states that it intends to rely upon all of the points in its assignments of error.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

HAROLD JUDSON,
Acting Solicitor General.

Service of the above Statement of Points and Designation of Record acknowledged this 10th day of October 1945.

JOHN H. BIGGS,
Counsel for Appellee.

[File endorsement omitted.]

47 Supreme Court of the United States

Order postponing further consideration of the question of jurisdiction

November 5, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing on the merits. The case is transferred to the summary docket.

Mr. Justice JACKSON took no part in the consideration of this question.

[Endorsement on cover:] Enter the Attorney General. File No. 50149. Western Washington. D. C. U. S. Term No. 447. The United States of America, Appellant vs. Sheldon Maurice Anderson. Filed September 24, 1945. Term No. 447 O. T. 1945.

U. S. GOVERNMENT PRINTING OFFICE 1945

In the United States District Court for the Western District of Washington

No. 15711—Criminal

UNITED STATES OF AMERICA

v.

SHELDON MAURICE ANDERSON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

STATEMENT AS TO JURISDICTION UNDER RULE 12 OF THE SUPREME COURT OF THE UNITED STATES

(Filed July 31st, 1945)

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment and order of the District Court entered in this cause on July 10, 1945, sustaining a demurrer to the indictment. Petition for appeal was filed July 31st, 1945, and is presented to the District Court herewith, to wit, on July 31st, 1945.

667525—45——1

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by the Act of March 2, 1907, 34 Stat. 1246 (as amended by the Act of May 9, 1942, 56 Stat. 401), 18 U. S. C. 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code, 28 U. S. C. 345.

STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940 (54 Stat. 594–595, 50 U. S. C. Appendix 311) provides:

> Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the pro-

visions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the Administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by

courts to the trial of cases arising under this Act.

THE ISSUE AND THE RULING BELOW

The defendant was indicted in the United States District Court for the Western District of Washington in one count charging that on or about April 18, 1945, at Fort Lewis in the State of Washington, he "did knowingly fail, neglect and refuse to perform a duty required of him under the Selective Training and Service Act of 1940 and the Rules and Regulations issued thereunder in that he * * * did then and there refuse to submit to induction and to be inducted into the armed forces of the United States as directed and ordered so to do by Spokane City Local Draft Board No. 2 of Spokane, Washington,"[1] in violation of Section 11 of the Selective Training and Service Act (Supra, P. 2). He demurred to the indictment on the ground, *inter alia*, that the District Court of the United States for the Western District of Washington lacked jurisdiction over the defendant and the subject matter of the action. Pursuant to a memorandum opinion dated June 8, 1945, the court entered an order on July 10, 1945, sustaining the demurrer on this ground. The court concluded that since the offense charged was the failure of the de-

[1] The city of Spokane is located in the Eastern District of Washington and Fort Lewis, the induction center, is situated in the Western District of Washington.

fendant to submit to induction as directed by the order of his local board, the offense was committed, if at all, within the Eastern District of Washington, where the local board is situated, and not in the Western District, where the induction station is located and where the refusal occurred. It was the Court's view that the Act "clearly fixes the jurisdiction of the courts in reference to violations such as here involved, as being in the place where the local draft board is located." Thus the question presented by the case is whether a selective service registrant who refuses to submit to induction may be prosecuted in the federal district where he so refused or whether the Selective Training and Service Act requires that he be prosecuted in the district in which his local board is located. Since this question involves a construction of the Act, it is subject to review by the Supreme Court on direct appeal. *United States* v. *Johnson,* 323 U. S. 273; *United States* v. *Lombardo,* 241 U. S. 73; *United States* v. *Freeman,* 239 U. S. 117.

THE QUESTION IS SUBSTANTIAL

As the District Court pointed out, this case presents "an issue of far-reaching importance" involving a construction of the Sixth Amendment and of the Selective Training and Service Act and the Selective Service Regulations. Section 11 of the Act provides, in part, that any person who knowingly fails to perform a duty under

the Act may be punished "upon conviction in the district court of the United States having jurisdiction thereof." Nothing in the Act or the regulations specifies which district court shall have jurisdiction of offenses under the Act. We think it clear that the regulations relied upon by the District Court as requiring that prosecutions under the Act be had only in the district in which the registrant's local board is located do not touch on the question of venue. Rather, they are related to the performance of the administrative functions of the Selective Service System and are not directed in any sense to the question of venue. In these circumstances, we believe that Section 11 must be construed as contemplating that venue under the Act will be determined by applying the settled rule that the prosecution shall be in the district in which the offense was committed. *Haas* v. *Henkel,* 216 U. S. 462, 473. If this is the test, it is plain that the defendant's offense was committed in the Western District of Washington.

It is important that the charge in this case of refusing to submit to induction be distinguished from an indictment charging a failure to report for induction, such as was involved in *Falbo* v. *United States,* 320 U. S. 549. Where the offense specified is a failure to report for induction, we agree that the prosecution must be in the district in which the local board is located. For the offense is the failure to perform the act of report-

ing to the board and is thus committed in the district in which the board is located, regardless of whether the registrant is present in that district. *United States* v. *Van den Berg*, 139 F. 2d 654 (C. C. A. 7); *Humes* v. *Pescor*, 148 F. 2d 127 (C. C. A. 8); cf. *Rumely* v. *McCarthy*, 250 U. S. 283, 289.

On the other hand, the offense of refusing to submit to induction can be committed only after the registrant has reported to his local board and has been transported to an induction station. Thereafter, if he is found acceptable, he is required to undergo the induction ceremony. Selective Service Regulation 633.21–633.22; *Billings* v. *Truesdell*, 321 U. S. 542, 557. The facts before the district court show that the defendant reported to his board, was transported to Fort Lewis, and while at Fort Lewis, refused to undergo the induction ceremony. Since the only act which was wrongful occurred at Fort Lewis, in the Western District of Washington, it follows that venue was properly laid in the United States District Court for the Western District of Washington.

No other court, to our knowledge, has agreed with the decision of the court below. Indeed, in *Bratcher* v. *United States*, decided May 9, 1945 (C. C. A. 4), certiorari denied, June 18, 1945, a similar contention to that advanced by the defendant was rejected. Cf. *Hardwick* v. *United States*, 257 Fed. 505, 508 (C. C. A. 9).

The question presented by the case is one of importance in the administration of the Act. The Department of Justice has previously directed the United States Attorneys to prosecute for refusal to submit to induction in the district in which the refusal occurs, and prosecutions have been had on the basis of these instructions. The War Department likewise has directed its personnel to report registrants who refuse to submit to induction to the United States Attorney in the district in which the induction station is located. Thus apart from the fact that if the defendant were prosecuted in the Eastern District of Washington, that court might disagree with the decision below and the defendant would thus escape prosecution entirely, it is essential to the successful adminstration of the Act that the conflict in views be resolved.

Appended hereto is a copy of the order of the District Court entered July 10, 1945, and a copy of its prior memorandum opinion of June 8, 1945.

Respectfully submitted.

(S) HUGH B. COX,
Acting Solicitor General.

(S) J. CHARLES DENNIS,
United States Attorney,
Western District of Washington.

United States District Court, Western District of Washington, Southern Division

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No. 15711—Memorandum Opinion

UNITED STATES OF AMERICA, PLAINTIFF

vs.

SHELDON MAURICE ANDERSON, DEFENDANT

J. Charles Dennis, U. S. Attorney; Harry Sager, Asst. U. S. Attorney, Tacoma, Washington, Attorneys for Plaintiff.

John H. Binns, 514 Fidelity Bldg., Tacoma, Wash., Attorney for Defendant (Apptd. by Court).

LEAVY, *District Judge:*

This defendant, Sheldon Maurice Anderson, was indicted by a Grand Jury in this District and Division, the charging part of the indictment being as follows:

> That Sheldon Maurice Anderson, * * * on or about the 18th day of April, 1945, at Fort Lewis, in Pierce County, State of Washington, then and there being, did knowingly fail, neglect and refuse to perform a duty required of him under the Selective Training and Service Act of 1940 and the Rules and Regulations issued thereunder in that he * * * did then

and there refuse to submit to induction and to be inducted into the Armed Forces of the United States as directed and ordered so to do by Spokane City Local Draft Board No. 2 of Spokane, Washington, the said Local Board then and there having authority to make such order and direction;

After the defendant was brought into court for arraignment, he being an impecunious person and unable to secure counsel, the Court appointed John H. Binns, Esq., a member of the Tacoma bar, to represent the defendant. Mr. Binns thereafter filed a Demurrer to the indictment, challenging it upon two grounds, to-wit:

1. That it does not state facts sufficient to constitute a crime.

2. That the above entitled court has no jurisdiction of the defendant or the subject matter of the action.

This matter is now before the court for disposition on the Defendant's Demurrer, and the first ground thereof is overruled, but the challenge as to the jurisdiction of this court of the offense charged must be sustained.

Specifically, the charge contained in the indictment is that the defendant refused to submit to induction into the Armed Forces of the United States, as directed and ordered so to do by the Spokane City Local Draft Board No. 2, of Spokane, Washington.

During the course of the argument on the Demurrer, it was developed that the defendant actually responded to the order of induction by the Spokane Local Draft Board, and accompanied a group of draftees from Spokane, Washington, to Fort Lewis, Washington. The court takes judicial notice of the fact that Spokane is not within its jurisdiction, but is located within the jurisdiction of the United States District Court for the Eastern District of Washington. Fort Lewis is located within the jurisdiction of this court. While at the Fort and undergoing the final steps of his induction, the defendant declined to take the Oath, unless he were given the assurance that Army regulations concerning vaccination would be waived as to him. Such assurances were denied, and he was permitted to return to Spokane, Washington. Subsequently he was indicted in this Judicial District.

It is the contention of the Government that the defendant's failure to submit to induction into the Armed Forces after his arrival within this Judicial District fixed the venue and jurisdiction of the offense herein.

Taking the language of the indictment at its face, the precise question presented is: Of what offense is the defendant accused? The Government admits that the defendant is charged with refusing to submit to induction, as ordered and directed to do by his Draft Board, and then fur-

ther contends that "induction" is made up of a number of separate steps, and that the final steps necessary to complete it in this case happen to be in this Judicial District by reason of the fact that Fort Lewis is located therein, and that, therefore, this Court has jurisdiction of the offense charged. A careful reading of the Selective Training and Service Act of 1940, and the Amendments thereto, Title 50 U. S. C. A. Sec. 301 et seq., together with the regulations promulgated under the provisions of the Act, does not sustain this contention. On the contrary, it clearly fixes the jurisdiction of the courts in reference to violations such as here involved, as being in the place where the local draft board is located.

Passing upon this Demurrer naturally calls for a construction of the constitutional rights of the defendant under the 6th Amendment providing for trial "by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law," and to give application to this constitutional provision calls for a construction of the Selective Training and Service Act and the Regulations in reference to jurisdiction.

The Demurrer to the Indictment presents an issue of far-reaching importance because it is elementary in criminal law that if the court is without jurisdiction of the subject matter its proceeding is a nullity. Even the consent of the

accused can not confer jurisdiction, and it is an issue that can be made at any stage of the proceedings, or raised after conviction and execution of judgment by way of Writ of Habeas Corpus. It is not only a matter of great importance to the individual here involved, but might readily involve a great number of prosecutions that arise by reason of the criminal provisions of the Selective Training and Service Act and Regulations, which call for an interpretation of them in reference to the jurisdictional question here presented. It is for this reason that I have endeavored to examine carefully the provisions of the Act, itself, and the Regulations to ascertain the intent of Congress in its enactment, and, likewise, the intent of the executive department that promulgated the Regulations, in reference to fixing jurisdiction.

Congress, in enacting this legislation and providing for the penalties, in Section 311, with great particularity provided, "The District Court of the United States having jurisdiction thereof," would be the tribunal to try offenses, and that "no person shall be tried by any military or naval court martial in any case arising under the Act, unless such person has been actually inducted for the training and service prescribed under this Act."

When we turn to the Regulations, we find Section 601.5, which says:

> A delinquent is a man liable for training and service under the provisions of the Selective Training and Service Act of 1940, as amended, who fails or neglects to perform any duty required of him under the provisions of the Selective Training and Service Act of 1940 as amended, and the Regulations made pursuant thereto.

Section 601.8 provides:

> The term "induction station" refers to any camp, post, ship or station at which selected men are received by the military authorities, and, if found acceptable, are inducted into the military service.

Section 613.14 reads:

> The local board for the area in which the residence of the registrant is located, *will always have jurisdiction of the registrant.* [Emphasis added.]

Then the Regulations in Sec. 613.21 make the further provision concerning recalcitrants:

> If he is still refractory, his name and the names of the witnesses should be noted and the case immediately reported to the Chairman of the local board, who may report the case to the United States District Attorney.

To me this clearly implies that such report can be made only to the United States Attorney for the district in which the local board is located.

In Regulation 614.47, provision is made for jurisdiction where a person registers more than

once, and it is therein provided that unless the registrant has selected one of the local boards for jurisdiction, the registrant shall be subject to the jurisdiction of each local board having a registration card of such registrant.

Section 629.22 of the Regulations dealing with the forwarding of registrants for pre-induction physical examination provides in Sub-section (e) that:

> The local board shall instruct all registrants in the group that it is their duty to obey the instructions of the leader or assistant leaders during the time they are going to and returning from the induction station; that they will be met by proper representatives of the armed forces when they arrive at the induction station; that while they are at the induction station, they will be subject to and must obey the orders of the representatives of the armed forces; that they must present themselves for and submit to such examination as the commanding officer of the induction station shall direct; that they will be returned to the local board when the examination is completed.

Sec. 633.22, which concerns forwarding registrants for induction, and is directly in point in the instant situation, provides in Subdivision (4) as follows:

> The local board shall instruct all registrants in the group that it is their duty to

> obey the instructions of the leader or assistant leaders during the time they are going to the place of induction; that they will be met by proper representatives of the armed forces at the place of induction; that while they are at the place of induction they will be subject to and must obey the orders of the representatives of the armed forces; that *they must present themselves for and submit to induction;* that if they are rejected, the representatives of the armed forces will, to the extent prescribed by the regulations of the armed forces, provide transportation and subsistence for their return trip. [Emphasis added.]

Then Sec. 642.41 outlines the duties of the local board in reference to the failure of any of its registrants to submit to its orders, and those duties are:

> Every registrant who has heretofore or who hereafter fails to comply with an order for induction * * * shall be reported promptly to the United States Attorney on a Delinquent Registrant Report; provided, that if the local board believes that by reasonable effort it may be able to locate the registrant and secure his compliance, it may delay the mailing of such Delinquent Registrant Report.

Section 642.42 fixes the duties of the United States District Attorney when such Report is made, and Section 642.44 requires that the local board keep a record of delinquents.

From the foregoing quotations of the Regulations, it is clear that this defendant is still within the jurisdiction of his local board in Spokane, Washington, and subject to its further orders and directions, and it follows logically that the "United States District Attorney" referred to in the Regulations can be none other than the United States District Attorney of the judicial district wherein the local board is located.

There have been numerous decisions interpreting and construing the Selective Training and Service Act and Regulations. I shall refer to only a few of them, as they seem to bear, either directly or inferentially, on this question of jurisdiction.

In *Falbo* vs. *United States*, 320 U. S. 459 (553), the Court uses the following language:

> In each case the registrant is under the same obligation to obey the order. But in neither case is the order to report the equivalent of acceptance for service. Completion of the functions of the local boards and appellate agencies, important as are these functions, is not the end of the selective service process. The selectee may still be rejected at the induction center, and the conscientious objector who is opposed to noncombatant duty may be rejected at the civilian public service camp. The connected series of steps into the national service which begins with registration with the local board does not end until the registrant

> is accepted by the army, navy or civilian public service camp. Thus, a board order to report is no more than a necessary intermediate step in a united and continuous process designed to raise an army speedily and efficiently.

This decision has been followed by the more recent case of *Billings* vs. *Truesdell,* 321 U. S. 542, wherein it quoted the *Falbo* case to the effect that induction is one continuous process for the selection of men for national service, and then the court said: (Page 547)

> The examination of men at induction centers and their acceptance or rejection are parts of that process. Induction marks its end. But prior to that time a selectee is still subject to the Act and not yet a soldier. A case involving his rights or duties as a selectee prior to that event is a case arising under the Act. The civil authorities, not the military, are charged with the duties of enforcement at that stage of the process. That necessarily means that the measure of a selectee's rights and duties is to be found in the Act, * * *.

In *United States* vs. *Collura,* 139 Fed. 2nd 345, Second Circuit, we have a case where the inductee assumed an attitude identical with that of the defendant in this case in that he refused to be inducted unless the regulation concerning vaccination would be waived as to him, and while the issue of jurisdiction was not presented, the Court,

in passing upon the reasons given by the defendant for not submitting to induction, had this to say:

> The district judge refused to consider the validity of the Army Regulations regarding vaccination and rightly restricted the issue to whether or not the appellant reported at the induction center *prepared to be inducted into the army without qualification.* * * * The selectees must not only appear but must be ready to go through the process which constitutes induction into the army. [Emphasis added.]

The Government cites among authorities that it relies upon the case of *United States* vs. *Van Den Berg,* 139 Fed. 2nd 654, 7th Circuit. This case is not directly in point, but it would seem to sustain the position of the defendant rather than that of the Government, because the accused insisted that jurisdiction was in the district of his residence, rather than in the district where he had registered, and the court held that he could not divest the court of jurisdiction in the district where his omission to act constituted a crime.

When we apply the language of the Act and Regulations, and the judicial interpretations, it is clearly established: First, that this defendant is still a civilian; Second, he continues to be a registrant of the Spokane City Local Draft Board No. 2 of Spokane, Washington; Third, that Board alone has the power to order his induction or fur-

ther consider his classification; and, Fourth, the offense with which he is charged is a failure to obey the order of induction of that Board. Therefore, the offense was committed, if at all, within the Eastern District of Washington. The United States District Court for the Eastern District of Washington alone has jurisdiction, and it is there that the defendant must be proceeded against.

An order sustaining the demurrer may be submitted, and an exception will be allowed to the plaintiff.

Dated this 8th day of June, 1945.

CHARLES H. LEAVY.

U. S. GOVERNMENT PRINTING OFFICE: 1945

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 447

THE UNITED STATES OF AMERICA, APPELLANT

v.

SHELDON MAURICE ANDERSON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the district court (R. 4–10) is reported at 60 F. Supp. 649.

JURISDICTION

The jurisdiction of this Court on direct appeal is invoked under the Act of March 2, 1907, c. 2564, 34 Stat. 1246, as amended by the Act of May 9, 1942, c. 295, 56 Stat. 271, 18 U. S. C., Supp. IV, 682, commonly known as the Criminal

Appeals Act, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938, 28 U. S. C. 345. The order of the district court sustaining appellee's demurrer to the indictment was filed on July 10, 1945 (R. 21–22).[1] The appeal to this Court was applied for (R. 22–23) and allowed (R. 24) on July 31, 1945. Upon submission of the Government's statement as to jurisdiction, this Court on November 5, 1945, postponed further consideration of the question of its jurisdiction to the hearing on the merits (R. 26).

QUESTIONS PRESENTED

1. Whether the order of the district court sustaining the demurrer to the indictment was predicated upon a construction of Section 11 of the Selective Training and Service Act, the statute upon which the indictment was founded.

2. Whether a selective service registrant who reports at the induction station but refuses to submit to induction may be prosecuted therefor in the federal judicial district where such refusal occurred or whether the Selective Training and Service Act and the regulations thereunder require that he be prosecuted in the district in which his local board is located.

---

[1] An earlier order sustaining the demurrer, dated June 12, 1945 (R. 10), was vacated on July 10, 1945 (R. 21), after the Government had filed a petition for rehearing (R. 11–20) which the court granted (R. 21).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 11 of the Selective Training and Service Act of 1940 (54 Stat. 894–895, 50 U. S. C. Appendix 311) provides:

> Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, *or who in any manner shall*

> *knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act,* or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the Administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, *upon conviction in the district court of the United States having jurisdiction thereof,* be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act. [Italics added.]

Article III, Section 2, Clause 3, of the Constitution, provides:

> The Trial of all Crimes * * * shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; * * *.

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law * * *.

The Criminal Appeals Act, 34 Stat. 1246, as amended, 18 U. S. C. 682 (Supp. IV) provides in pertinent part:

> An appeal may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases in the following instances, to wit:
>
> From a decision or judgment quashing, setting aside, or sustaining a demurrer or plea in abatement to any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is founded.
>
> * * * * *
>
> The appeal in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted.
>
> Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be admitted to bail on his own recognizance: *Provided,* That if an appeal shall be taken pursuant

to this section to the Supreme Court of the United States which, in the opinion of that Court, should have been taken to a circuit court of appeals, or the United States Court of Appeals for the District of Columbia, the Supreme Court of the United States shall remand the cause to the Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia as the case may be, which shall then have jurisdiction to hear and determine the same as if the appeal had been taken to that court in the first instance; and if an appeal shall be taken pursuant to this section to any circuit court of appeals or to the United States Court of Appeals for the District of Columbia, which, in the opinion of such court, should have been taken directly to the Supreme Court of the United States, such court shall certify the case to the Supreme Court of the United States, which shall thereupon have jurisdiction to hear and determine the cause to the same extent as if an appeal had been taken directly to that Court.

* * * * *

STATEMENT

Appellee registered with a local board in Spokane, Washington, under the Selective Training and Service Act of 1940. He was ordered to report for induction and reported at the local board in Spokane pursuant to this order. He proceeded with a group of inductees to the induction station at Fort Lewis, Washington.

While at Fort Lewis, he refused to complete the induction process by submitting to induction. (R. 5.)

The appellee was indicted (R. 2–3) on May 12, 1945, in the United States District Court for the Western District of Washington in one count charging that on or about April 18, 1945, at Fort Lewis, Washington, he "did knowingly fail, neglect, and refuse to perform a duty required of him under the Selective Training and Service Act of 1940 and the Rules and Regulations issued thereunder in that he * * * did then and there refuse to submit to induction and to be inducted into the Armed Forces of the United States as directed and ordered so to do by Spokane City Local Draft Board No. 2 of Spokane, Washington," in violation of Section 11 of the Selective Training and Service Act (*supra*, p. 3). The city of Spokane, where appellee is registered, is in the eastern district of Washington, and Fort Lewis, where he refused to be inducted, is in the western district of Washington (R. 5).

Appellee demurred (R. 3) to the indictment on the ground, *inter alia*, that the District Court for the Western District of Washington had "no jurisdiction of the defendant or of the subject matter of the action." Pursuant to a memorandum opinion dated June 8, 1945 (R. 4–10), the district court entered an order on July 10, 1945 (R. 21–22), sustaining the demurrer on the

ground that "this court has no jurisdiction of the defendant, nor of the subject matter of this action."

SPECIFICATION OF ERRORS TO BE URGED

1. That the court erred in holding that a violation of Section 11 of the Selective Training and Service Act of 1940 (54 Stat. 894–895, 50 U. S. C. Appendix 311) by the refusal of a registrant to submit to induction as directed by the order of his local board may only be prosecuted in the federal district in which the local board is located and may not be prosecuted in the federal district in which the induction station, at which the refusal to submit to induction occurred, is located.

2. The District Court erred in sustaining the demurrer to the indictment.

SUMMARY OF ARGUMENT

I

The decision of the district court sustaining the demurrer purported to and was based upon a construction of Section 11 of the Selective Training and Service Act, upon which the indictment is founded. This Court possesses jurisdiction under the Criminal Appeals Act to entertain a direct appeal by the Government from an order sustaining a demurrer, where the decision is based upon a construction of the statute upon which the indictment is founded. Since the appeal was applied for and allowed within thirty days from the entry of the district court's order, the appeal is timely.

II

The provision of Section 11 of the Selective Training and Service Act, adverted to by the district court, that violators shall be prosecuted in the "district court of the United States having jurisdiction thereof" has no bearing on the question where the offense of refusing to submit to induction occurred; it is merely a venue requirement that the prosecution shall be in the district in which the offense occurs. Under the Act and Selective Service Regulations the duty to submit to induction arises at the induction station after the registrant has been accepted for service and the offense of refusing to submit to induction necessarily occurs at the induction station when a registrant refuses to be inducted.

ARGUMENT

I

THE APPEAL IS TIMELY AND THE DECISION BELOW SUSTAINING THE DEMURRER TO THE INDICTMENT IS PREDICATED SOLELY UPON THE DISTRICT COURT'S CONSTRUCTION OF THE SELECTIVE TRAINING AND SERVICE ACT

This Court's order of November 5, 1945 (R. 26), stated that the Government's statement as to jurisdiction had been considered by the Court and that "further consideration of the question of jurisdiction of this Court is postponed to the hearing on the merits."

The Government has appealed directly to this Court under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, as amended by the Act of May 9, 1942, c. 295, 56 Stat. 271, 18 U. S. C., Supp. IV, 682. The second paragraph of that act permits a direct appeal from "a decision or judgment * * * sustaining a demurrer * * * to any indictment or information, or any count thereof, where such decision or judgment is based upon the * * * construction of the statute upon which the indictment or information is founded." The indictment in this case is founded on Section 11 of the Selective Training and Service Act, which makes it a criminal offense for a registrant to fail to perform a "duty" under the act or the regulations promulgated pursuant to the authority of the act. In this case appellee was charged with failing to perform his "duty" of submitting to induction as ordered by his local board. And in sustaining the demurrer to the indictment, the district court held generally that the offense occurred in the judicial district in which the local board was located and that the district court for that district is the only court which had jurisdiction of the offense.[2] The court's rea-

[2] While the order of the district court sustaining the demurrer was predicated on the ground not only that the court lacked jurisdiction of the subject matter but also of the defendant himself (R. 22), it is clear from the court's opinion that the defendant was personally in court (R. 40–45) and that what the court meant was that it lacked jurisdiction over the defendant solely because it had no jurisdiction of the case

soning appears in its memorandum opinion of June 8, 1945 (R. 4–10), rendered in connection with an earlier order sustaining the demurrer (R. 10), which was vacated (R. 21) upon the Government's petition for rehearing (R. 11–20).[3]

At several places in its opinion (R. 5–6, 8, 9) the court stated that it was construing the Selective Training and Service Act, as well as the Selective Service Regulations. The only specific provision of the act to which it referred is that portion of Section 11 which provides that a defendant who violates the act shall be punished "upon" conviction in the district court of the United States having jurisdiction thereof." It is

(R. 6). The demurrer, in addition to challenging the jurisdiction of the court, attacked the indictment as not stating facts sufficient to constitute a crime (R. 3), but the district court (R. 21–22) overruled the demurrer on this ground.

[3] There can be no question concerning the timeliness of the appeal, for the order of the district court from which the appeal is taken was entered July 10, 1945 (R. 21–22), and the appeal was applied for and allowed on July 31, 1945 (R. 24), within thirty days after the entry of the order, as required by the Criminal Appeals Act. A chronological summary of the proceedings in the district court on the demurrer shows that in the first instance the court overruled it on June 2, 1945 (R. 3–4); thereafter, on June 8, the court entered a memorandum opinion (R. 4–10) and on June 12, an order (R. 10) sustaining the demurrer. On June 25, 1945, the Government filed a petition for rehearing (R. 11–20) asking that the order sustaining the demurrer be set aside and that the demurrer be overruled. On July 10, 1945, the court granted the petition for rehearing and vacated its order of June 12, 1945 (R. 21). On the same day, after reargument of the demurrer, the court entered the order appealed from sustaining the demurrer (R. 21–22).

difficult to determine from the opinion whether the district court utilized this provision in support of its holding that the offense occurred in Spokane, where the local board was located, or whether it relied upon this provision only in support of its apparent conclusion that the only district court which possesses jurisdiction of any offense under Section 11 is the district court within whose territorial limits the offense occurs; that the clause in question prescribes a non-waivable territorial jurisdictional limitation (see R. 6) and is not a mere venue provision. In either event, however, the court construed section 11 and, as is required by the Criminal Appeals Act as a condition to this Court's jurisdiction, it thus construed the statute upon which the indictment is founded. Cf. *United States* v. *Midstate Horticultural Co.*, 306 U. S. 161, 163, 164–165.

While the court did not specifically advert to it in its opinion, we think the court also necessarily construed the clause of section 11 penalizing any person "who in any manner shall knowingly fail or neglect to perform any *duty* required of him under or in execution of this act, or rules or regulations made pursuant to the act." (Italics added.) For only by construing the statutory terms could the court ascertain what the duty was and where it must be performed and hence where the offense occurred. Cf. *United States* v. *Johnson*, 323 U. S. 273; *United States* v. *Lom-*

bardo, 241 U. S. 73; *United States* v. *Freeman*, 239 U. S. 117; see also, *United States* v. *Foster*, 233 U. S. 515, 523.

In doing so, the court of course referred to the Selective Service Regulations which specifically impose upon the registrant the obligation to submit to induction. But at all times the court was engaged in construing the statutory term "duty required of him under or in execution of * * * [the] rules or regulations made pursuant to this act." If the duty required of appellee had been particularized in the statute itself there could be no question that there would be presented a construction of the act upon which the indictment is founded. The situation is no different where the duty required of the appellee is specified in the Selective Service Regulations, for the act incorporates those regulations for purposes of criminal punishment.

In its broad outlines this aspect of the case closely resembles *United States* v. *Birdsall*, 233 U. S. 223, which also involved a direct appeal to this Court under the Criminal Appeals Act. That case involved two indictments, one of which charged that the defendant gave a bribe to two officials of the Interior Department with intent to influence their official action so that they would advise the Commissioner of Indian affairs, contrary to the truth, that leniency should be given to specified persons who had been convicted for

unlawfully selling liquor to Indians, in violation of Section 39 of the Criminal Code (18 U. S. C. 91). Section 39 interdicts bribery of a government officer "with intent to influence him to commit * * * any fraud * * * on the United States, or to induce him to do or omit to do any act in violation of his lawful *duty.*" (Italics added.) The question before this Court was whether the action which was sought to be influenced was within the official duty of the persons who received the bribes. This Court, in the performance of its appellate function under the Criminal Appeals Act, construed Section 39 by looking to the regulations and usages of the Interior Department to determine the precise nature of the duties of the officials involved. Similarly, in this case the district court construed the statutory language in question by referring to the Selective Service Regulations.

Since the order of the district court was predicated upon a construction of the Selective Training and Service Act, this Court has jurisdiction of the appeal under the Criminal Appeals Act. If, however, this Court lacks jurisdiction, the case must be remanded to the Circuit Court of Appeals for the Ninth Circuit, "which shall then have jurisdiction to hear and determine the same as if the appeal had been taken to that court in the first instance." 18 U. S. C., Supp. IV, 682; see *United States* v. *Wayne Pump Co.*, 317 U. S. 200, 208–210.

II

THE OFFENSE OF REFUSING TO SUBMIT TO INDUCTION WAS COMMITTED IN THE JUDICIAL DISTRICT IN WHICH THE REFUSAL OCCURRED

Assuming that this Court possesses jurisdiction to consider the question presented by the case, the issue raised by the appeal is whether a registrant may be prosecuted under Section 11 of the Selective Training and Service Act, for failing to submit to induction, in the judicial district in which the failure occurred or whether he must be prosecuted in the district in which his local board is located. The question arises solely because the induction station to which appellee reported and at which he refused to submit to induction is located in a different judicial district from the one in which the local board is located.

1. As we have suggested, the district court's view as to where the offense occurred may have been predicated, in part at least, upon its view of the meaning of the provision of Section 11 that violators of the act shall be prosecuted in the district court having jurisdiction of the offense. We think that the statutory language in question does not aid in determining where the refusal to submit to induction occurred; instead, the provision is a venue requirement that the defendant shall be prosecuted where the offense occurred.

The words "in the district court of the United States having jurisdiction thereof" in Section 11 of

the Selective Training and Service Act of 1940 were first used in the Selective Draft Act of 1917 (Act of May 18, 1917, c. 15, 40 Stat. 76). Section 6 of the 1917 Act provided that violators "shall * * *. be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, or, if subject to military law, shall be tried by court-martial and suffer such punishment as a court-martial may direct."

The 1917 Act was introduced in the House of Representatives as H. R. 3545 and a companion bill, S. 1871, was introduced in the Senate. Significantly, both bills originally contained the words "upon conviction in the *proper* district court of the United States" (italics added) in the penal clause. The Committee on Military Affairs of the House recommended that this provision be amended by striking out the word "proper" and inserting after the words "district court of the United States," the words "having jurisdiction thereof." The Committee report gave no explanation for this suggested amendment. H. Rep. No. 17, 65th Cong., 1st Sess. There was likewise no comment on this provision in the hearing before the Committee on H. R. 3545. The Committee amendment was adopted by the House without explanation or debate (55 Cong. Rec. 1534) and the bill passed the House containing the language

"in the district court of the United States having jurisdiction thereof." 55 Cong. Rec. 1557.

The Committee on Military Affairs of the Senate reported S. 1871 without amendment as to the provision here in question. S. Rep. No. 22, 65th Cong., 1st Sess. After the passage of H. R. 3545 in the House, the Senate substituted the entire provisions of S. 1871 for H. R. 3545. 55 Cong. Rec. 1629. Thus, as passed by the Senate, the bill contained the original language "upon conviction in the proper district court of the United States."

The bill was thereafter sent to conference and was reported by the Conference Committee with the House language. H. Rep. No. 49, 65th Cong., 1st Sess.; 55 Cong. Rec. 2197. The report gives no explanation for the use of the language in the House bill instead of that in the Senate bill. The bill was enacted without any additional reference to the provision in question.

Nothing in the history of the statutory language permits the conclusion that the provision was intended to fix the place where offenses under the act occur. Likewise, since every federal district court possesses jurisdiction over the subject matter of all federal criminal offenses (Act of March 3, 1911, Section 24, 36 Stat. 1091, 28 U. S. C. 41 (2)), we think the language of the 1917 Act (and of the present act) must have been intended to mean something other than jurisdiction over the

subject matter. We think the original language of the 1917 bill that prosecutions shall be had in the "proper district court of the United States" meant that the prosecution was to be in the district court for the district in which the offense was committed. Cf. *United States* v. *Midstate Horticultural Co., supra.* The ultimate change in the statutory language from the "proper" court to the court "having jurisdiction thereof" appears to have been a language change which was made without any purpose of changing the meaning of the provision in question.

Our examination of the judicial decisions relating to the penal provisions of the 1917 Act has revealed no case in which the language in question was construed by the courts. To our knowledge, it was generally assumed that venue for prosecutions under that Act was determined by applying the general rule that the prosecution shall be had where the offense was committed.

The 1940 Act was, of course, modeled on the 1917 Act. The Burke-Wadsworth bill, which was introduced in both the Senate (S. 4164; 86 Cong. Rec. 8680) and the House of Representatives (H. R. 10132; 86 Cong. Rec. 8908) and which eventually became the Selective Training and Service Act, contained the same statutory language, "in the district court of the United States having jurisdiction thereof," as was in the 1917 Act. The legislative history of the 1940 Act

shows that no change was ever made in the statutory language in question and that it was never the subject of discussion either in committee or upon the floor of either house of Congress.[4]

Viewed in the context of its history we think the provision of Section 11 that violations of the Act shall be prosecuted in the district court having jurisdiction thereof means nothing more than that the prosecution shall, consistently with the venue provisions of the Constitution, be had in the district where the offense was committed.

While the district court viewed the provision in question as a strictly jurisdictional rather than a venue provision (R. 6), it may be noted that under either characterization the prosecution was properly instituted in the Western District of Washington for, as we shall show, the only illegal act occurred in that district.

2. There can be no serious question that appellee's failure to submit to induction, which is the basis of the prosecution, occurred at the induction station, within the judicial district of the court below. When a registrant receives an induction order, he is required to report to the local board, to proceed from the local board to the induction station, and, if he is found acceptable, to submit to induction. See Section 633.21 (b) of the Se-

[4] The committee reports on the bills are as follows:
S. Rep. 2002, H. Rep. 2903, H. Rep. 2937, H. Rep. 2947, 76th Cong., 3d sess.

lective Service Regulations;[5] *Estep* v. *United States,* Nos. 66 and 292, this Term, decided February 4, 1946; *Billings* v. *Truesdell,* 321 U. S. 542, 557. Under this selective service procedure appellee could not have committed the offense of refusing to submit to induction within the district of his local board. For it was not until he had reported to the induction station and had been found acceptable that he was obliged to submit to induction. When he refused to do so, he, of course, failed to perform a duty required of him at the induction station. Since the act of submitting to induction was required to be performed at the induction station, the offense of refusing to do so necessarily occurred at that place; it could not have occurred at any other place. *Rumely* v. *McCarthy,* 250 U. S. 283; *United States* v. *Lombardo,* 241 U. S. 73; *New York Central* v. *United States,* 166 Fed. 267 (C. C. A. 2); *United States* v. *Commerford,* 64 F. 2d 28 (C. C. A. 2), certiorari denied, 289 U. S. 759; *Bowles* v. *United States,* 73 F. 2d 772 (C. C. A. 4), certiorari denied, 294 U. S. 710; *State* v. *Brewster,* 87 N. J. Law 75.

It is important that the charge in this case of

[5] "(b) Upon reporting for induction, it shall be the duty of the registrant: (1) to follow the instructions of a member or clerk of a local board as to the manner in which he shall be transported to the location where his induction will be accomplished, (2) to obey the instructions of the leader or assistant leaders appointed for the group being forwarded for induction, (3) to appear at the place where his induc-

refusing to submit to induction be distinguished from an indictment charging a failure to report for induction, such as was involved in *Falbo* v. *United States,* 320 U. S. 549. Where the latter offense is specified, we agree that the venue of the prosecution is the district in which the local board is located. For the offense is the failure to perform the act of reporting to the board and is thus committed in the district in which the board is located, regardless of whether the registrant is present in that district. *United States* v. *Van Den Berg,* 139 F. 2d 654 (C. C. A. 7); *Humes* v. *Pescor,* 148 F. 2d 127 (C. C. A. 8); cf. *Rumely* v. *McCarthy, supra.*

No other court, to our knowledge, has agreed with the decision of the district court. In *Bratcher* v. *United States,* 149 F. 2d 742, certiorari denied, 325 U. S. 885, the Circuit Court of Appeals for the Fourth Circuit flatly rejected a contention that a registrant of a local board in Washington, D. C., could not be prosecuted in the Eastern District of Virginia, in which the induction station was located.[6]

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tion will be accomplished, (4) to obey the orders of the representatives of the armed forces while at the place where his induction will be accomplished, (5) to submit to induction, and (6) if he is not accepted by the armed forces, to follow the instructions of the representatives of the armed forces as to the manner in which he will be transported on his return trip to the local board."

[6] Bratcher had been charged with evading military service by consuming benzedrine at the induction station.

It was the view of the district court that the Selective Service Regulations disclose an intention that violations shall be prosecuted only in the district in which the defendant is registered. However, the Regulations are merely related to the performance of the administrative functions of the Selective Service System and are not directed in any sense to the question of venue. In fact, the Regulations could not determine the venue for prosecutions in any other way than by defining the place where certain duties are to be performed.

The court relied largely on Section 613.14 of the Regulations, which provides that "the local board for the area in which the residence of the registrant is located, will always have jurisdiction of the registrant" (R. 7). This means that a registrant cannot change his local board even though he should move. We believe this clearly has no reference to the venue for criminal prosecutions. In addition, the court placed great reliance (R. 7–8) on the provisions of the Regulations (Sec. 613.21 and Sec. 642.41) dealing with the reporting of delinquents to the United States Attorney. These provisions, of course, could have no control over the question of venue and merely deal with the administrative problem of advising the Department of Justice of a possible violation warranting prosecution.[7] The other provisions of the Regulations re-

[7] It may be noted in this respect that the administrative instructions issued by the War Department in a case of refusal to submit to induction do not support the court's con-

lied on by the court do not, we believe, require special comment since they pertain in no way either to jurisdiction or venue for prosecutions.

Finally, the district court found that several cases under the 1940 Act seemed "to bear, either directly or inferentially, on this question of jurisdiction" (R. 8). In this connection the Court cited and quoted from *Falbo* v. *United States*, 320 U. S. 549, *Billings* v. *Truesdell*, 321 U. S. 542, and *United States* v. *Collura*, 139 F. 2d 345 (C. C. A. 2). We believe that none of these cases in any way dealt with the question here at issue and do not support the court's conclusions.

The only other case relied on by the Court was *United States* v. *Van Den Berg*, 139 F. 2d 654 (C. C. A. 7). In that case the defendant was registered with a local board in the eastern district of Wisconsin. While living in the western district of Wisconsin he was ordered to report to his local board in the eastern district for assignment to work of national importance under civilian direction. Failing to report, he was indicted in the eastern district. The circuit court

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clusion. After the decision in *Billings* v. *Truesdell*, 321 U. S. 542, it was deemed necessary to issue definite instructions as to cases in which registrants reported to the induction station but refused to submit to induction. The induction station officers were instructed to report cases of refusal to submit to induction to the United States Attorney for the district in which the induction station is situated rather than the district in which the local board is located. See A. R. 615-500, Para. 15 (f); see also, R. 15-16.

of appeals properly held that since the defendant failed to perform a duty required to be performed by him in the eastern district of Wisconsin, he was properly prosecuted in that district. This decision was based on the general rules of venue and in no way was based on any requirement that the defendant be prosecuted in the district in which his local board is situated.

CONCLUSION

For the reasons stated, this Court has jurisdiction of the appeal and appellee was validly prosecuted in the Western District of Washington. We, therefore, respectfully submit that the judgment below should be reversed and the case remanded for further proceedings.

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MARCH 1946.

U. S. GOVERNMENT PRINTING OFFICE 1946

SUPREME COURT OF THE UNITED STATES.

No. 447.—October Term, 1945.

The United States of America, Appellant, *vs.* Sheldon Maurice Anderson.	Appeal from the District Court of the United States for the Western District of Washington.

[June 10, 1946.]

Mr. Justice Rutledge delivered the opinion of the Court.

On the merits the issue is narrow, namely, whether in a criminal prosecution under § 11 of the Selective Training and Service Act, 54 Stat. 885, 894; 50 U. S. C. App. § 311, for refusal to submit to induction, the venue is properly laid in the judicial district where the act of refusal occurred rather than in the district where the draft board which issued the order is located.

The facts in the case are simple. A draft board in the City of Spokane, Washington, had jurisdiction over appellee. He obeyed an order to report for induction issued by this board and, with others selected, went from Spokane to Fort Lewis, Washington. At Fort Lewis he refused to take the oath of induction unless assured that Army regulations requiring vaccination would be waived. The assurance was refused. He was not inducted and returned to Spokane. Later he was indicted in the District Court for the Western District of Washington, where Fort Lewis is located, for his refusal to submit to induction.

Appellee demurred to the indictment. One ground was that the court had "no jurisdiction of the defendant or the subject matter of the action." The District Court took judicial notice that, although Fort Lewis was within its territorial jurisdiction, the City of Spokane was located within the Eastern District of Washington. Believing the proper venue was the district where the draft board was located, the court concluded that in these circumstances it had no jurisdiction over the offense. Accordingly, it sustained the demurrer.[1] 60 F. Supp. 649.

[1] Subsequently on rehearing the District Court again sustained the demurrer on the ground that "this court has no jurisdiction of the defendant, nor of the subject matter of this action."

The United States has appealed directly to this Court under the Criminal Appeals Act.[2] We postponed determination of our jurisdiction to the hearing on the merits. — U. S. —.

The Criminal Appeals Act permits a direct appeal by the United States from district courts in criminal cases:

> "From a decision or judgment quashing, setting aside or sustaining a demurrer or plea in abatement to any indictment or information, or any count thereof, where such decision or judgment is based upon the validity or construction of the statute upon which the indictment or information is founded."

We think the Government is correct in availing itself of the right to appeal. Ordinarily when a district court sustains a demurrer to an indictment on the ground of improper venue the Government may appeal directly to this Court. Compare *United States* v. *Johnson*, 53 F. Supp. 596, with *United States* v. *Johnson*, 323 U. S. 273; *United States* v. *Lombardo*, 228 Fed. 980, with *United States* v. *Lombardo*, 241 U. S. 73; see *United States* v. *Freeman*, 239 U. S. 117; *United States* v. *Midstate Horticultural Co.*, 306 U. S. 161. This is true at any rate where the statute itself contains a venue provision. Cf., however, *United States* v. *Johnson*, *supra*.

Section 11 of the Selective Training and Service Act[3] provides that offenses such as the one with which appellee was charged shall be tried "in the district court of the United States having

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[2] Act of March 2, 1907, 34 Stat. 1246, as amended by the Act of May 9, 1942, 56 Stat. 271; 18 U. S. C. § 682.

[3] Section 11 of the Selective Training and Service Act of 1940 (54 Stat. 894, 50 U. S. C. App. § 311) provides:

> Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having or exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or non-liability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, *or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of*

jurisdiction thereof."[4] The District Court determined that it did not have "jurisdiction" of the offense. In doing so it necessarily construed the Act.[5] For in this case, as in *United States* v. *Midstate Horticultural Co., supra*, the statute under which the indictment was returned "provides expressly for the jurisdiction over offenses created by it . . . ."[6]

Accordingly this Court has jurisdiction of the appeal. We therefore pass to consideration of the merits.

The "jurisdictional" provision in § 11 is apparently derived from the Selective Draft Act of 1917, 40 Stat. 76.[7] Section 6 of that statute provided that those charged with offenses under or against the Act "shall, if not subject to military law, be guilty of a misdemeanor, and *upon conviction in the district court of the United States having jurisdiction thereof*, be punished by imprisonment for not more than one year." Emphasis added. The legislative history of the 1917 Act shows that the bills originally introduced in the Senate and House of Representatives read somewhat differently. The language was "upon conviction in the proper district court of the United States." However, the Committee on Military Affairs of the House of Representatives recommended the change in phraseology,[8] and both the House

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this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, *upon conviction in the district court of the United States having jurisdiction thereof*, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. Emphasis added.

[4] The Government suggests that this is not a "mere venue provision" but "prescribes a non-waivable territorial jurisdiction limitation." We need not decide that question in this case.

[5] This is true, even though the District Court looked to the regulations promulgated under the Act as aids in interpretation. To what sources a court may go for its conclusions is not important, for purposes of the Criminal Appeals Act, so long as the end result is a construction of the statute.

[6] United States v. Midstate Horticultural Co., 306 U. S. 161, 163, note 2. That case turned on a not very dissimilar provision. *Id.* at 164-165, 67, note 4.

[7] No discussion of the provision is to be found in the legislative history of the Selective Training and Service Act. The bills introduced in the Senate and the House contained the same language employed in the Act as it was finally passed. S. 2164, 76th Cong., 3d Sess., introduced at 86 Cong. Rec. 2; H. R. 10132, 76th Cong., 3d Sess., introduced at 86 Cong. Rec. 12888.

[8] H. Rep. No. 17, 65th Cong., 1st Sess., 1.

and the Senate accepted the change.[9]

There is nothing in either the statute or the legislative history to show an intention on the part of Congress to depart from the Sixth Amendment's command that trials shall be in the "State and district wherein the crime shall have been committed." Exactly the contrary was the purpose and effect of the provision.

Since the statute does not indicate where Congress considered the place of committing the crime to be, compare *Armour Packing Co.* v. *United States*, 209 U. S. 56, with *United States* v. *Johnson*, *supra*, the *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it. Cf. *United States* v. *Bowman*, 260 U. S. 94, 97-98.

Although Anderson reported to Fort Lewis in accordance with the draft board's order and, so far as appears, observed it in every other respect except the final step of taking the oath and thus submitting to induction, cf. *Estep* v. *United States*, 326 U. S. —; *Billings* v. *Truesdell*, 321 U. S. 542; *Falbo* v. *United States*, 320 U. S. 549, the District Court concluded that the Act, together with the regulations, "clearly fixes the jurisdiction of the courts in reference to violations such as here involved, as being in the place where the local draft board is located." It supported this conclusion by inference from various regulations.[10]

We think the District Court was in error. Nothing in the Act apart from § 11, or in the regulations relied on, even purports to deal with venue or jurisdiction for the trial of violations, or justifies an inference that any effort was made to fix the place for all such trials in the district where the draft board is located.[11] We need not inquire how far this might have been

[9] The House of Representatives passed the bill with the provision as recommended by the Committee on Military Affairs. The Senate passed it with the provision in its original form but subsequently a conference committee adopted the House version. H. Rep. No. 49, 65th Cong., 1st Sess.

[10] The regulations upon which the District Court relied in part, with special emphasis on § 613.14, are not pertinent. As the Government says, they relate "to the performance of the administrative functions of the Selective Service System and are not directed in any sense to the question of venue" or jurisdiction of the courts to try offenses arising under the Act.

The District Court also thought some support for its ruling could be derived from the decisions in United States v. Collura, 139 F. 2d 345, and United States v. Van Den Berg, 139 F. 2d 654, although not regarding either as directly in point.

[11] It was noted in the petition for rehearing in the District Court, however, that the Department of Justice in 1942 had instructed United States Attorneys that, in cases of failure to report for induction "venue is in the district where the subject was ordered to report," apparently without regard to whether he had ever been present physically there.

done, if attempted. But obviously, in view of the Sixth Amendment's provision, no such over-all effort could be effective as to any violation taking place outside that district. The constitutional specification is geographic; and the geography prescribed is the district or districts[12] within which the offense is committed. This may or may not be the place where the defendant resides; where the draft board is located; or where the duty violated would be performed, if performed in full. The places of residence,[13] of the draft board's location, of final and complete performance,[14] all may be situated in districts different from that where the criminal act is done. When they so differ, it is the latter, not any of the former, which determines the jurisdiction.[15]

It is, of course, necessary in order to decide where the crime is committed to ascertain what duty it was, the failure to perform which constitutes the crime, and also what acts of the defendant constituted the violation. Difficulties at times arise in these respects, especially where the crime consists merely in omitting to do something which is commanded to be done.[16]

In this case, however, the problem is not difficult. For the duty was clear and precise, as were the place of performance and the place of refusal to perform, and the two places were identical.

The duty was to submit to induction. In the facts here, it was to take the oath. The place where this was required to be done was Fort Lewis and nowhere else. The place where appellee refused, flatly and unequivocally, to take it and thereby to submit

[12] Within the doctrine of continuing offenses, as to which trial constitutionally may be had in one or another of the districts in which the offense is carried on. Armour Packing Co. v. United States, 209 U. S. 56; cf. United States v. Johnson, 323 U. S. 273.

[13] Cf. Haas v. Henkel, 216 U. S. 462; Andrade v. United States, 16 F. 2d 776; United States v. Jordan, 22 F. 2d 702; United States v. Mayer, 22 F. 2d 827.

[14] Compare the cases holding that when an omission to act is the crime, the venue is the jurisdictional locality where the act should have been performed, e.g., Regina v. Milner, 2 Car. & K. 310, 175 Eng. Rep. 128; New York Cent. & H. R. Co. v. United States, 166 Fed. 267, 269; State v. Yocum, 182 Ind. 478; State v. Brewster, 87 N. J. L. 75; State v. Peabody, 25 R. I. 544; 1 Bishop, New Criminal Procedure (2d ed.) § 53 5). See United States v. Lombardo, 241 U. S. 73; Rumely v. McCarthy, 250 U. S. 283; United States v. Van Den Berg, 139 F. 2d 654, 656.

[15] Haas v. Henkel, 216 U. S. 462.

[16] Cf. authorities cited in note 14.

to induction was likewise Fort Lewis. Until that refusal, as the Government says, he had violated no provision of the law or of any regulation. It was his right under the *Falbo*, *Billings* and *Estep* decisions to exhaust the entire administrative process up to the final step before induction, as he did. Then for the first time he declined to go forward as he was required to do. This refusal was his crime. It took place at Fort Lewis. The District Court accordingly had jurisdiction.

We express no opinion concerning whether appellee's continued failure, after returning to Spokane, to take the oath would have conferred jurisdiction within that district under the idea of continuing offense. Nor need we express views concerning any other situation not involved in the facts, for example, such as would be presented on the present indictment if appellee had never left Spokane or reported at Fort Lewis.

The judgment is

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.